IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3403 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO.LTD.

Versus

POPATALAL SHIVLAL SONI

Appearance:

MR RK MISHRA for Appellant

MR SK PATEL for Respondent No. 1

MR SANJAY R PATEL for Respondent No. 2

MS NIRALI B MUNSHI for Respondent No. 3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 18/12/2001

ORAL JUDGEMENT

Heard Mr.R.K.Mishra, learned advocate appearing on behalf of the appellant, Mr.S.K.Patel, learned

advocate appearing on behalf of the respondent No.1, Mr.Sanjay R. Patel, learned advocate appearing on behalf of the respondent No.2 and Ms.N.B.Munshi, learned advocate appearing on behalf of the respondent No.3.

2. During the hearing, Mr.R.K.Mishra, learned advocate for the appellant - Insurance Company has taken me through the order under challenge passed by the Tribunal as well as certain documents. The appellant Insurance Company has during the pendency of the appeal, moved this Court by filing the application being Civil Application No.12297 of 2001 for seeking direction from this Court by highlighting the fact that the applications were filed by the claimant in respect of vehicle, which was involved, namely scooter, and the said scooter met with an accident for more than five times during the span of six months and the said scooter belonged to one of the employee of the Court. As the appeal was admitted, during the hearing of Civil Application No.12297 of 2001, I called for the record and proceedings from the Tribunal.

3. I have also perused the application filed by the respondent - claimant claiming the compensation of Rs.40,000/-- against the driver, owner of the scooter as well as Insurance Company. It is the case of the respondent - claimant, that he met with an accident on 19th January, 1999, Near Yogeshvar Sow Mills, Opp.Motipura Khedatsia Road at Himatnagar, wherein he has sustained fracture on his right hand as well as injury, which has resulted in permanent disability. The claim application was submitted by the claimant on 4th November, 1999. The list at Exh.4 shows that the respondent - claimant has relied upon certain documents namely, copy of the F.I.R., Panchnama of the scene of offence, Injury certificate, disability certificate and the chargesheet filed against the driver and the copy of the policy issued by respondent No.3. The said application was registered as Motor Accident Claims Petition No.1788 of 1999 before the Motor Accident Claims Tribunal at Himmatnagar. On behalf of the claimant, Exh.5 was filed under Section 140 of the Motor Vehicles Act and claimed Rs.25,000/--, the said application was also submitted on the very date. On 13th November, 2000, an application Exh.16 was submitted before the Tribunal by the Insurance Company highlighting that the claimant had met with an accident and the vehicle involved namely was scooter bearing No.GJ-9-D-8928 and the said scooter has also earlier five times met with an accident and the claimant in that case has filed applications praying for compensation before the Tribunal being Motor Accident

Claims Petition Nos.115/99, 338/99, 812/99 and 1788/99 and the same are pending for the decisions before the Tribunal. As the same scooter was involved in the accident, the Insurance Company had investigated the case and requested that the application filed by the claimant under Section 140 of the Motor Vehicle Act is required to be heard urgently. During the pendency of the application, on behalf of the claimant through the advocate, an application was moved on 23/01/2001 praying for reduction of the claim amount from Rs.40,000/-- to Rs.25,000/-- on the ground that looking to the disability sustained by him as well as income and his age, it is not possible to get compensation for more than Rs.25,000/--. The said application is at Exh.18 on record and the Tribunal has rejected the said application without mentioning the date. The application Exh.5 was heard by the Motor Accident Claims Tribunal and the Tribunal has awarded Rs.25,000/-- to the claimant by holding that all the opponents are jointly and severally liable to pay compensation of Rs.25,000/-with interest at the rate of 9% from the date of application and further observed that the order of disbursement will be passed later on. The Tribunal has accordingly disposed of the application under Section 140 of the Motor Vehicles Act as per order dated 31st May, 2001. Considering the order passed by the Tribunal application below Exh.18 wherein the application for reduction of claim was moved by the claimant. As found from the order, the Tribunal has rejected the said application without giving any reasons. Once application is submitted, the court has to consider the same and decide the same in accordance with law. In the present case, as observed earlier when the application below Exh.18 was submitted by the claimant through his advocate praying for reduction of the claim on the ground that in view of the injury sustained by him on various ground, he is not in a position to get by way of compensation for more than Rs.25,000/-- and accordingly, prayed for reduction of the claim from Rs.40,000/-- to Rs.25,000/--. The Tribunal has while deciding the application below Exh.5, which was heard subsequently and as per the order dated 31st May, 2001, the Tribunal has allowed the application of the claim under Section 140 of the Motor Vehicles Act on 31st May, 2001. Mr.S.K.Patel, learned advocate appearing on behalf of the claimant under the instructions from his client has fairly stated before me that looking to the contentions raised by the Insurance Company, it is not possible for him to pray for the award passed by the Tribunal under Section 140 of the Motor Vehicles Act and accordingly, he has considered that the award passed under Section 140 under no fault liability be set aside.

4. In view of the stand taken by the learned advocate for the respondent, the present appeal filed by the Insurance Company is deserved to be allowed and the order passed by the Tribunal dated 31st May, 2001 under no fault liability is set aside and as the present appeal is allowed. The amount deposited by the Insurance Company in this Court is ordered to be transmitted to the Tribunal for which the appellant - Insurance company is entitled to get back the said amount and the Tribunal shall pass appropriate order for such withdrawal. As the order passed by the Tribunal under Section 140 of the Motor Vehicles Act is set aside. The Tribunal is directed to decide the main application of the claimant being Motor Accident Claims Petition No.1788 of 1999 pending before the Tribunal in accordance with law. The office is directed to send back the record and proceedings forthwith to the Tribunal.

(D.K.Trivedi,J.)

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